



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

ROBERT W. SWANSON
ACTING DIRECTOR

Analysis of Enrolled House Bills 4870, 4891, and 5636

Topic: *Order of priority in which survivors have the right to possess a decedent's body and power to make decisions about funeral arrangements.*

Sponsor: *Representative Bruce Caswell (4870 and 5836)
Representative David Law (4891)*

Committee: *House Judiciary
Senate Judiciary*

Date Introduced: *June 7, 2005 and March 7, 2006 (5836)*

Date Enrolled:

Date of Analysis: *May 10, 2006*

Position: *The Department of Labor & Economic Growth has taken no position on these bills. The Department of Community Health is the lead on HB 5636.*

Problem/Background:

The Michigan Funeral Directors' Association (MFDA) frequently receives inquiries from funeral directors about how to handle funerals when family members disagree over a decision to cremate the body of a family member. Because family members may be unable to resolve the issue amongst themselves, and due to the irreversible nature of cremation and a desire to avoid litigation, funeral homes tend to proceed with burial of the body rather than cremation. A recent, highly publicized case resulted in the inadvertent dumping of a body in a landfill because the body was being stored in at the funeral home's garage until a determination could be made.

Description of Bills:

House Bill 4870 amends the Estates and Protected Individuals Code by creating an order of priority for determining who has the right to make decisions about the handling, disposition or disinterment of a decedent's body within the Code. If unable to reach a consensus among those with equal priority, the bill provides that a majority of those with equal priority may decide.

If after a good-faith effort is made to contact those next of kin with priority and they cannot be located or choose not to exercise their authority, the bill allows for persons at the next level of priority to make a decision. The bill further provides a means of resolution if no one can be found with the proper relationship to make those decisions. Finally, if there is a dispute that cannot be resolved, the bill provides for petitioning the probate court for an expedited

determination of authority. If there is a dispute about the right of the next of kin to make the decision regarding disposition, a party may petition the circuit court for relief.

The law also provides that a mortuary science licensee, funeral director, or cemetery acting in good faith, is not liable for the funeral or the handling, disposition or disinterment of the body.

House Bill 4891 amends the Occupational Code (MCL 339.1801) to cite the amendments to the Estates and Protected Individuals Code from prior language that directed the funeral establishment simply to the “next of kin.”

House Bill 5836 amends the Public Health Code (MCL 333.2851) so that the person with authority to dispose of the body and burial in the Estates and Protected Individuals Code is cited in those sections that address consent for autopsies and anatomical gifts.

Summary of Arguments

Pro:

By spelling out the legal line of authority, decisions for the handling and disposition of a deceased person’s body may be more speedily resolved out of court, if family members cannot agree. Narrow language in the bills require that Funeral directors and cemeteries will not be held liable for decisions that some may oppose regarding the disposition, and handling of the body, because they acted as directed by other family members.

Certain amendments in the bills allow for exceptions to this established hierarchy when state interests are involved, such as medical schools and the department of corrections.

Con:

There should not be a need to put such family decisions in law. If a funeral director has not acted capriciously, family members would not need to file lawsuits against them for the mishandling of deceased family members’ bodies. The legislation requires extreme action to reach all possible family members in cases where there would be no problem if the funeral director simply followed a prepaid funeral contract or the wishes of those family members present at the time funeral arrangements are made. Legislation that creates routine solutions for the most egregious problems is costly and time consuming to funeral directors and families alike.

The hierarchy established in the bill does not give priority to a custodial parent. If there is a dispute between the parents regarding the funeral arrangements, one of them would have to file a petition with the court to determine who has the authority to make the arrangements.

The legislation does not address other family members’ ability to overrule the deceased’s desire to be cremated as outlined in the any prepaid funeral contract, or as they may have instructed in a will. This discrepancy was pointed out in the State Court Administrator’s testimony as a conflict between the Public Health Code, Section 700.3701 which gives the personal representative the power to “carry out the decedent’s written instructions relating to the decedent’s body, funeral

and burial arrangements”, and section 1810 of the Occupational Code, Section 339.1810(n) and (o). The department has also received significant public inquiry regarding this issue.

In addition to determining the hierarchy for next of kin, provision should be made to allow a decision made by a personal representative carrying out the wishes of the deceased as provided in their will for the disposition of their own body; and eliminate the statutory conflict. An amendment to the Occupational Code could avoid conflict for personal representatives who may try to act upon the terms of a will, only to be required to wait for a family disagreement to be settled, or a different decision by the family, before the funeral director will agree to the disposition of the body. It would also relieve individuals making end of life decisions who may be concerned that family members could disregard their specific wishes after their death.

Fiscal/Economic Impact

- (a) **Department:** there is no impact upon the department beyond the cost of printing copies of the revised law for its own use.

Budgetary:

Revenue: There is no revenue to the state associated with this bill.

Comments:

- (b) **State:** There is no impact upon the state with regard to this legislation.

Budgetary: By spelling out the order of priority and how to handle disputed cases, this legislation may reduce the number of court cases.

Revenue: This legislation provides no new revenue to the state.

- (c) **Local Government:** There should be no impact upon local government.

Other State Departments: None.

Any Other Pertinent Information:

The Michigan Funeral Directors' Association supports these bills.
The Department of Community Health supports the legislation.
The State Court Administrator is neutral on the bills.

Administrative Rules Impact:

None.

Suggested language changes to the Occupational Code:

(n) If a public officer or employee, an official of a public institution, convalescent home, private nursing home, maternity home, public or private hospital, physician or surgeon, or any other person having a professional relationship with a decedent or county medical examiner or other public official having temporary custody of the decedent, sending or causing to be sent to a person or establishment licensed under this article the remains of a decedent

1 of the ~~next of kin~~ **PERSON WITH AUTHORITY OVER THE DISPOSAL OF THE**
2 **REMAINS OF THE DECEDENT UNDER SECTION 3206 OF THE ESTATES AND**
3 **PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.3206,** and of the
4 person who may be chargeable with the funeral expenses of the
5 decedent. If ~~kin~~ **A PERSON WITH AUTHORITY OVER THE DISPOSAL OF THE**
6 **REMAINS OF THE DECEDENT UNDER SECTION 3206 OF THE ESTATES AND**
7 **PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.3206,** is found
subject to the provisions of MCL 700.3701,
8 the person's authority and directions shall govern the disposal of
9 the remains of the decedent.

10 (o) If a licensee, receiving remains in violation of the
11 requirements of subdivision (n) and making a charge for a
service
12 in connection with the remains before the delivery of the
remains

13 as stipulated in order as follows by:

a) A personal representative as provided in MCL 700.3701, including
any prepaid funeral or cemetery arrangements made on behalf of the
decedent,

b) the kin **PERSON WITH AUTHORITY OVER THE DISPOSAL**

14 **OF THE REMAINS OF THE DECEDENT UNDER SECTION 3206 OF THE**
ESTATES

15 **AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.3206.** This
16 subdivision shall not prevent a person or establishment
licensed

17 under this article from charging and being reimbursed for
services

18 rendered in connection with the removal of the remains of a
19 deceased person in case of accidental or violent death, and
20 rendering necessary services required until the next of kin
21 **PERSON WITH AUTHORITY OVER THE DISPOSAL OF THE REMAINS OF THE**
22 **DECEDENT UNDER SECTION 3206 OF THE ESTATES AND PROTECTED**
23 **INDIVIDUALS CODE, 1998 PA 386, MCL 700.3206,** or the person who
is
24 chargeable with the funeral expenses is notified.

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